

# ELLIS:LAWHORNE

John F. Beach  
Direct dial: 803/343-1269  
[jbeach@ellislawhorne.com](mailto:jbeach@ellislawhorne.com)

July 29, 2004

## **VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE**

Elliott Elam, Esquire  
Acting Consumer Advocate  
**SC Department of Consumer Affairs**  
3600 Forest Drive  
Columbia, SC 29209

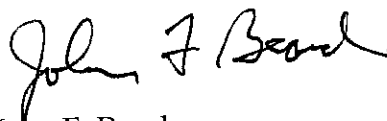
RE: Application of Total Environmental Solutions, Inc. for Adjustment of  
Rates and Charges for Provision of Water and Sewer Collection  
**Docket No. 2004-90-W/S, Our File No. 557-10022**

Dear Elliott:

Along with this letter, I am including the Responses to the Consumer Advocates's  
Second Set of Discovery Requests in the above-referenced proceeding.

With kind regards, I am

Yours truly,



John F. Beach

JFB/cr

cc: Executive Director/South Carolina Public Service Commission  
Mr. Paul Maeder  
Mr. Gary Shambaugh

Attachments

ElamDisc2ndDiscReq.wpd

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-90-W/S

IN THE MATTER OF:	)	<b>TOTAL ENVIRONMENTAL</b>
	)	<b>SOLUTIONS, INC.'S</b>
Total Environmental Solutions, Inc.	)	<b>RESPONSES TO</b>
Application for Increase in Rates and	)	<b>INTERROGATORIES OF THE</b>
Charges for Water and Sewer Services	)	<b>CONSUMER ADVOCATE</b>
	)	<b>(Set No. 2)</b>

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TO: The South Carolina Department of Consumer Affairs, (the "Consumer Advocate"), through its attorney, Elliott F. Elam, Jr..

Total Environmental Solutions, Inc. ("TESI") makes the following general objections to the Interrogatories, and incorporates them by reference into TESI's specific responses.

A. TESI objects to the general instructions set forth at the beginning of the Consumer Advocate's Interrogatories to the extent that the instructions operate to impose discovery obligations on TESI inconsistent with, or beyond the scope of, what is permitted under the Rules and Regulations of the Public Service Commission of South Carolina (the "Commission"), and Rules 26 and 33 of the South Carolina Rules of Civil Procedure.

B. TESI objects to Consumer Advocate's Interrogatories to the extent that they are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 33 of the South Carolina Rules of Civil Procedure.

C. TESI objects to Consumer Advocate's Interrogatories to the extent that they purport to seek discovery of information protected by attorney/client privilege, the work product doctrine or any other applicable privilege.

D. TESI objects to Consumer Advocate's Interrogatories to the extent that they purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of TESI concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26(b)(3) without the requisite showing that Consumer Advocate has substantial need of the materials and/or information in the preparation of its case and that Consumer Advocate is unable without undue hardship to obtain the substantial equivalent of the information and/or materials by other means.

E. TESI objects to Consumer Advocate's Interrogatories to the extent that they purport to impose discovery obligations on TESI inconsistent with, or beyond the scope of, what is permitted under the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 33 of the South Carolina Rules of Civil Procedure.

F. TESI objects to Consumer Advocate's Interrogatories to the extent that they purport to seek discovery of matters other than those subject to the jurisdiction of the Commission pursuant to the FCC's Triennial Review Order and other applicable South Carolina law.

G. TESI objects to Consumer Advocate's Interrogatories to the extent that they purport to seek disclosure of information that is proprietary confidential information or a "trade secret" without the issuance of an appropriate Protective Order pursuant to South Carolina law.

H. TESI objects to all Interrogatories which require the disclosure of information which already is in the public domain or otherwise on record with the Commission or the FCC.

I. TESI objects to Consumer Advocate's Interrogatories the extent that they seek information and discovery of facts known and opinions held by experts acquired and/or developed in anticipation of litigation or for hearing and outside the scope of discoverable information pursuant to the Rules and Regulations of the Public Service Commission of South Carolina, and Rules 26 and 33 of the South Carolina Rules of Civil Procedure.

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2004-90-W/S

IN THE MATTER OF:

Total Environmental Solutions, Inc.  
Application for Increase in Rates and  
Charges for Water and Sewer Services

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INTERROGATORIES OF  
THE CONSUMER ADVOCATE  
(Set No. 2)

- 2-1. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), please provide the date of hire for each of the four positions shown on that schedule.

Response:

The current positions and date of hire as of 12/31/03 are as follows:

Office Manager	November 15, 1996
Field Supervisor	December 2, 2002
Field Technician	August 25, 2003

Responsible Party: Gary D. Shambaugh

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- 2-2. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), please state whether the four positions are unionized. If yes, please provide that portion of the union contract which states the effective dates and hourly rates for each position for 2002, 2003 and 2004.

Response:

The employees in South Carolina are not unionized.

Responsible Party: Gary D. Shambaugh

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- 2-3. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), if the hourly rates are projected, please provide an explanation detailing how the rates were projected and a supporting schedule.

Response:

The hourly rates were projected using the current rates of pay as of December 31, 2003. The Company projected a 3% salary increase for 2004, but such increase has not been granted.

Responsible Party: Gary D. Shambaugh

STATE OF SOUTH CAROLINA  
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- 2-4. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), if the hourly rates are projected, please provide a schedule similar to Supporting Schedule No. 3 utilizing actual 2003 hourly rates.

Response:

Such schedule has previously been provided in Supporting Schedule No. 3. Projections were based on the hourly rates provided, and supplemented by the 3% increase previously mentioned. Current pay rates at December 31, 2003 were as follows:

Office Manager \$10.75 per hour  
Field Supervisor \$ 12.00 per hour  
Field Technician \$ 8.64 per hour

Responsible Party: Gary D. Shambaugh

STATE OF SOUTH CAROLINA  
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(Set No. 2)

- 2-5. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), please explain in detail how the column OT Hours was determined. If the hours were projected, explain in detail and provide supporting workpapers showing how the projection was determined. If the hours are actual, explain for what calendar period the hours represent.

Response:

The overtime hours included in the Pro Forma 2004 Direct Salaries and Wages are based upon actual 2003 experienced overtime hours.

Responsible Party: Gary D. Shambaugh



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2-6. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), please provide a schedule detailing how each of the following columns was determined:

- a) Annual Salaries
- b) Fica-Employer
- c) FICA-MED Employer
- d) SUI
- e) FUI
- f) Total Taxes
- g) Health/Life/Dental Ins.
- h) 401K
- i) Employee Benefits

Response:

Payroll taxes were calculated using employees' hourly rates and rates established by statute. Deductions were based on actual amounts being deducted.

Responsible Party: Gary D. Shambaugh

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- 2-7. Regarding Supporting Schedule No. 3 for both Water and Sewer, 2004 Direct Salaries, Wages and Benefits (Pro Forma), please explain in detail and provide supporting workpapers showing how the Water and Sewer allocation percentages were determined. If a time study was performed, provide a copy of that study. If no such study was performed, explain.

Response:

The allocation of the Pro Forma 2004 Direct Salaries, Wages and Benefits were based upon the relative number of customers in each system.

Number of Customers Relative Percent

Water	561	50
Sewer	543	49
Lockhart	1	1

Responsible Party: Gary D. Shambaugh

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(Set No. 2)

- 2-8. Please clarify your response to Data Request 1-22a): Regarding Water and Sewer Adjustment 7 for affiliated service charges, please explain why no affiliated service charges were booked during calendar year 2002. Specifically, why didn't the Company's auditors present the affiliate costs as a separate line item in the 2002 audit? Why wasn't some attempt made to fairly represent affiliate costs on TESI's books?

Response:

The 2002 affiliate charges were recorded on TESI's books on a consolidated basis. Those charges were allocated to each state and system during the audit process.

AUS Consultants and the Company specifically requested that a separate line item be included in the 2002 audit that identified the affiliate charges. The Company's auditors did not comply with that request. The Company retained a new auditing firm to perform the 2003 audit.

Responsible Party: Gary D. Shambaugh

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(Set No. 2)

- 2-9. Regarding Supporting Schedule No. 5 for both Water and Sewer, Pro Forma 2004 Affiliate Charges, please explain in detail and provide supporting workpapers showing how the Salaries, Wages, Benefits and Taxes amounts for Pro Forma years 2003 and 2004 were determined.

Response:

	<u>Salaries, Wages, Benefits &amp; Taxes</u>	<u>Reference</u>
Fiscal Year 2002	\$27,143	Affiliate Charge Study
	x <u>1.00895</u>	Supporting Schedule No. 1
Pro Forma Year 2003	27,386	Project Increases
	x <u>1.02895</u>	
	28,179	Project Increases
Overall Increase	\$1,036	
Percent	3.82%	

Responsible Party: Gary D. Shambaugh

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- 2-10. Regarding Interrogatory CA Interrogatory No. 1-23 which stated: Regarding the Company's reply to Staff Data Request No. 1: Please list other jurisdictions and specific rate cases where the use of a coverage factor applied to annual debt service has been approved. Page 2, the Company replied: TESI's management functions are not directly regulated by any regulatory commission. The methodology in establishing the cost components of the affiliate charges is not as important as the determination of the reasonableness of the charge. Please explain in detail whether the Company believes that the methodology in establishing the cost components of the affiliate charges is or is not subject to Commission regulation.

Response:

The cost component of the Baton Rouge office building is not under the direct control or regulated by any one regulatory agency.

The Company chose the methodology in determining a fair and just cost to support the reasonableness of the rate for the office space. The Commission may allow or disallow any or all charges as a cost of service component in the rates established.

Responsible Party: Gary D. Shambaugh

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- 2-11. Regarding the Affiliated Service Charges Study provided as the reply to Staff Data Request No. 1, please provide a definition of coverage factor as used on page 2 of the study.

Response:

The Baton Rouge office building has outstanding debt and lien against the facility. Loan covenants require a level of earnings or debt service coverage. The debt service factor of 20% is relative to the covenants on the debt.

Responsible Party: Gary D. Shambaugh

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- 2-12. Regarding the additional response to C.A. 1-22b), please explain in detail why the amount of employee salaries and benefits allocated to South Carolina in 2003 (\$16,106) decreased from \$27,143 as shown on Supporting Schedule No. 5 for Fiscal Year 2002.

Response:

The decrease is attributable to the loss of one employee in late 2003. As indicated in testimony filed in this case, TESI does not have adequate funds from operations to fill this position. TESI has petitioned the Commission to provide funding for this position. Without the full complement of staff on board, TESI's ability to provide adequate service is limited.

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- 2-13. Regarding the 2003 Annual Reports to the SCPSC, please explain in detail the amounts booked to the following accounts for 2003: Water -#233-Accounts Payable to Associated Companies-\$669,665; Sewer-#223-Advances From Associated Companies-\$200,947.

Response:

Funds made available by affiliate companies totaling \$870,612 were utilized to pay current operating costs or fund capital improvements.

The South Carolina operations experienced net operating losses as follows:

	<u>Fiscal Year</u>	<u>N.O.L.</u>
	2001	(\$193,497)
	2002	(231,137)
	2003	(267,406)
June	2004	(130,219)

Capital investments since 2000 total approximately \$174,000.

Responsible Party: Gary D. Shambaugh



**ELLIS, LAWHORNE & SIMS, P.A.**

A handwritten signature in dark ink, appearing to read "John J. Beach", is written over a horizontal line.

John J. Beach, Esquire  
John J. Pringle, Jr., Esquire  
1501 Main Street, 5<sup>th</sup> Floor  
P.O. Box 2285  
Columbia SC 29202  
Telephone: (803) 779-0066  
Facsimile: (803) 799-8479  
Attorneys for the Total Environmental  
Solutions, Inc.

July 29, 2004  
Columbia, South Carolina